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July 18, 2011

Ken Salazar, Secretary  
Department of the Interior  
1849 C Street NW MS 4141- MIB  
Washington, D.C. 20240

RE: Comments on Department of Interior Draft Tribal Consultation Policy

Dear Secretary Salazar:

Central Council of the Tlingit and Haida Indian Tribes of Alaska (Tlingit Haida) is a federally-recognized tribe representing over 27,000 Tlingit and Haida Indians. I am the President of Central Council and it is my duty and responsibility, as President, to advocate for and represent our Tribe and tribal citizens on the federal, state, and local level.

I submitted comments to you on the first draft tribal consultation policy by letter dated March 14, 2011. Upon review of the second draft of the tribal consultation policy published in Federal Register Vol. 76, No. 95, I have found that the revisions offer little substantial change and do not address the comments I submitted previously.

As such, I feel it is necessary to respond once again to the solicitation for tribal input on the tribal consultation policy and reaffirm the primary points from my first review of the proposed policy:


1. The policy holds the "process of consultation" up as the measure of success. Tlingit Haida strongly contend that the consultation process should be the means to an end; not the end product. Consultations are very costly for tribes. Tribes expect their input to be incorporated and implemented into federal actions and activities. In order for consultations to be effective, the policy should be rewritten to consistent with this reality. Instead of being just a framework, it should identify minimum specific expectations for agency land managers who are proximate to tribes (i.e. establish relationship; meet at least annually for general topics, etc).
2. A Tribal Consultation policy should be founded on the tenets of Federal Indian Law and fundamentally an expression of Sovereignty - the core principles of which were pronounced by Chief Justice Marshall over two centuries ago. The ascendancy of federal power over Native American communities creates a political relationship upon which Indian tribes are compelled to rely. This reliance requires generally that the federal government adhere to an overriding duty of justice, fairness and "imposes a distinctive

3. obligation of trust incumbent upon the government in its dealings with these dependent and sometimes exploited people". Seminole Nation v. United States, 316 U.S. 286, 296 (1942). Companion to this well-recognized trust responsibility, is the canon of Federal Indian Law, which holds that statutes and programs passed for the benefit of Native Americans be liberally construed for the most expansive protections and benefits allowable by law. As the federal government implements the improvement and enhancement of its government-to-government consultation, policies proposed must uphold the over-riding trust responsibility to Native American tribes and should be drafted in an expansive manner that is protective of tribal interests.
4. The policy as structured and written is insufficient. It is lacking substance, specificity and logical grammar construction. We do not agree with the definitions for and use of "consultation" or "collaboration." The definitions chosen are not appropriate to this context, which makes the whole document null. Also, in several areas there are logic loops such as where "the policy" is defined by "the policy" and it contains statements such as "...including tribes in all stages of Tribal consultation..."

We do not concur with the policy that has been presented. Furthermore, we do not think it is consistent with the direction issued by President Obama of "getting the relationship right" and "not just providing lip service." We agree with President Obama that "without real communication and consultation, we're stuck year after year with policies that don't work on issues specific to you (Indians) and on broader issues that affect all of us."

I trust that you will consider my comments and recognize that further evaluation of the tribal consultation policy is needed in order for the policy to be in alignment with the laws that govern the relationships between American Indian tribes and the federal government.

Regards,



Edward K. Thomas  
President